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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/144,851	09/01/98	KATO Y	KATO=15

IM22/0908

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EXAMINER	
SHERRER, C	
ART UNIT	**PAPER NUMBER**
1761	9

DATE MAILED: 09/08/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/144,851	Applicant(s) Kato et al
	Examiner Curtis E. Sherrer	Group Art Unit 1761

☒ Responsive to communication(s) filed on *Aug 11, 1999* .

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *3* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *1-20* is/are pending in the application.

Of the above, claim(s) *10 and 20* is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *1-9 and 11-19* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☒ received.

☐ received in Application No. (Series Code/Serial Number) _____ .

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____ .

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Serial Number: 09/144,851

Art Unit: 1761

Part III DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Election/Restriction

2. Claims 11 and 20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected product, the requirement having been traversed in Paper No. 8.

3. Applicant's election with traverse of the restriction in Paper No. 8 is acknowledged. The traversal is on the ground(s) that the product must be produced by the method set forth in the elected process claims. This is not found persuasive because the determination of the product's patentability is dependent on the product and not necessarily the process recited in the product claim. See MPEP 2113.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-9 and 11-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. The scope of the phrases "flavorful acid citrus fruit juice" (Claim 1), and "a rapid brewing method" (Claims 9 and 18) are of unknown.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 2, 7, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Seike (Jap. Pat. No. 4190780).

9. Seike teaches the production of vinegar from citrus fruits, such as lemons, whereby the fruit juice is clarified with an enzyme, acid adjusted, sterilized, cooled, alcohol is added, it is inoculated with acetic acid bacteria and fermented, matured, filtered and juice from unripe fruit is added.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claims 3-6, 8, 9, 12-15, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seike in view of Jackson (Wine Science, pp. 229 and 279-80).

12. Seike teaches that cited above, including the modification of the pH, e.g., lowering the acidity, but does not specifically teach the citric acid reduction treatment. Jackson teaches the reduction of grape juice and/or wine acidity by means of precipitation, e.g., calcium carbonate addition, and column ion exchange. It would have been obvious to those of ordinary skill in the art to deacidify the fruit juices of Seike in order to modify the flavor of the final product.

13. Applicants' attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in the fact situation of the instant case, and wherein the Court stated on page 234 as follows:

> This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients which produces a new,

unexpected, and useful function. *In re Benjamin D. White*, 17 C.C.P.A (Patents) 956, 39 F.2d 974, 5 USPQ 267; *In re Mason et al.*, 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221.

14. While the reference cited above do not disclose the amounts of the fruit juice used, the specifically claimed citric acid content it is considered that in view of the court's holding in In re Levin it would have been obvious to those in the vinegar processing industry to modify these parameters as they are result effective variables that are commonly optimized.

15. Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seike in view of Jackson and in further view of Castillon et al (U.S. Pat. No. 5,415,775).

16. Seike in view of Jackson teaches that cited above but neither reference teaches the use of ultrafiltration in connection with vinegar. While such a limitation is considered to be notoriously well known in the art, Castillon et al teach that ultrafiltration membranes are commonly used to purify vinegar (col. 5, lines 34-39) and therefore it would have been obvious to those of ordinary skill in the art to ultrafilter the vinegar of Seike so as to increase its purity.

Conclusion

17. No claim is allowed.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Tuesday through Friday from 6:30 to 4:30.

19. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Lacey, can be reached on (703)-308-3535. The **fax phone number** for this Group is (703)-305-3602.

20. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Curtis E. Sherrer

September 7, 1999